
(2016) 06 OHC CK 0003
In the Orissa High Court
Case No : Writ Petition (C) No. 9839 of 2014

Sanatan Acharya

APPELLANT

Vs

Tahasildar, Panposh

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Orissa Survey and Settlement Act, 1958 — Section 15(b)

Citation : (2017) 123 CutLT 537

Hon'ble Judges : Kumari S. Panda and Mr. K.R. Mohapatra, JJ.

Bench : Division Bench

Advocate : M/s. N.K. Sahu and B. Swain, Advocates, for the Petitioner; Mr. Kishore Mishra, AGA, for the Opposite Parties

Final Decision : Allowed

Judgement

K.R. Mohapatra, J.—The petitioner in this writ petition seeks for a direction to quash order dated 12.03.2014 passed by the Tahasildar, Panposh district Sundargarh in Misc. Case No. 1 of 2014 pursuant to the direction of the Additional Commissioner, Settlement and Consolidation, Sambalpur dated 07.07.2012 in R.P. Case No. 240 of 2012.

2. The admitted facts in nut shell is that one Sanatana Acharya, the petitioner, who is a displaced person of village Tumkela due to acquisition of his land during 1954-55 for establishment of Rourkela Steel Plant, made an application on 04.06.1956 for lease of house site and agricultural land in village Kuanarmunda. Accordingly, Lease Case No. 71/1956-57 was initiated. After following due procedure of law, the S.D.O., Panposh granted lease of an area measuring Ac.1.50 decimal out of Sabik Plot No. 706/4, Khata No. 250, Kisam house site. Since then, the petitioner remained in possession of the land leased out in his favour exercising his right thereon. The Settlement Operation in village Kuanarmunda started in the year 1963-64. The petitioner could not take appropriate step in the Settlement proceeding to record the leasehold land in his name. The leasehold land of the petitioner was bifurcated into Hal Plot Nos. 1240

and 1240/3176 measuring an area Ac.0.86 decimal and Ac.0.64 decimal respectively and recorded in Hal Khata No. 397 (for short, "the case land"). In the Hal Settlement, the case land was recorded in favour of the State Government reflecting possession of one Minaketan Padhi and Surendra Kumar Singhdeo in the remarks column. The petitioner subsequently filed Mutation Case No. 493/96 to record the case land in his name on the basis of the lease granted in his favour. The Tahasildar, Kuanarmunda rejected the Mutation Case due to lack of jurisdiction. Accordingly, the petitioner filed RP Case No. 240 of 2012 under Section 15(b) of the Orissa Survey and Settlement Act, 1953 (for short the "OSS Act"). The R.P. Case was disposed of vide order dated 07.07.2012 by the Additional Commissioner, Settlement and Consolidation, Sambalpur (for short, "the Additional Commissioner") with a direction to the Tahasildar, Kuanarmunda to record the case land in the name of the petitioner on Rayati status with usual and equitable rent after deletion of the note made in the remarks column and to give effect to the order both in map and in record. However, the Tahasildar, Panposh, Kuanarmunda did not take any step for correction of record of right pursuant to the direction of the Additional Commissioner in RP Case No. 240 of 2012. As such, the petitioner filed W.P.(C) No. 19951 of 2013 before this Court, which was disposed of vide order dated 29.11.2013 with a direction to the Tahasildar, Panposh to take a decision on the application of the petitioner in accordance with law within a period of three months from the date of receipt of a copy of the order. Accordingly, the petition filed by the petitioner for correction of ROR was registered as Misc. Case No. 1 of 2014 on the file of the Tahasildar, Panposh. The case was adjourned to different dates and finally vide order dated 13.03.2014, Tahasildar, Panposh (O.P. No. 1) rejected the Misc. Case No. 1 of 2014 on the ground that the petitioner was never in possession over the case land. Thus, this writ petition has been filed assailing the said order.

3. Mr. N.K. Sahu, learned counsel for the petitioner reiterating the averments made in Writ petition submitted that vide Lease Case No. 71/1956-57, the case land was leased out in favour of the petitioner. The Settlement proceeding was initiated in village Kuanarmunda in the year 1963-64. By that time, the petitioner was residing at Rourkela as he had got an appointment in Rourkela Steel Plant under the Rehabilitation Assistance Scheme. Thus, he could not take appropriate step with regard to the case land in his name. However, during attestation stage of the Settlement operation in the year, 1968, the Settlement Authority reflected possession of the petitioner in respect of the case land with effect from 1962. However, the final ROR in respect of the case land was published in the name of the State Government reflecting note of possession in the name of said Minaketan Padhi and Surendra Kumar Singhdeo in the remarks column. Mr. Sahu referring to the averments made in paragraph-17 of the Counter Affidavit submitted that Sri Minaketan Padhi in course of hearing of Misc. Case No. 1 of 2014 had given declaration in writing that he was not in possession of Plot No. 1240 as reflected in the remarks column of the ROR. He further submitted that pursuant to initiation of Misc. Case No. 1 of 2014, the Tahasildar directed the R.I.

to make enquiry and submit a report with regard to the field position. During field enquiry, one Haribansh Padhi raised objection to the effect that he was encroaching the possession of the suit land since long and was in cultivating possession over the same. He also filed a petition on 20.02.2014 to the effect before opposite party No. 1. However, at paragraph-10 of the Counter Affidavit, it was specifically admitted by opposite parties 1 to 4 that an Encroachment Case bearing No. 7 of 2007 was initiated against two sons of said Haribansh Padhi, namely, J. Padhi and S. Padhi. Subsequently, eviction order was passed against them and the R.I., Kuanarmunda submitted his report on 30.11.2007 to the effect that they were evicted from the case land. Thus, the finding of opposite party No. 1 in the impugned order that the petitioner was not in possession over the suit land is not correct. Mr. Sahu further submitted that opposite party No. 1 has no jurisdiction or competence to sit over the direction given by the Additional Commissioner (O.P. No. 2). He has to implement the order in its letter and spirit. Thus, the opposite party No. 1 passed the impugned order exceeding his jurisdiction. In that view of the matter, Mr. Sahu prayed to quash the impugned order under Annexure-12.

4. Mr. Kishore Mishra, learned Additional Government Advocate refuting the above submission on the other hand submitted that opposite party No. 1 in order to ascertain the possession had made a field verification. During his field visit, he found five numbers of cement pillars existing in the boundary of the case land which appeared to have been erected about five to six years back to the field verification. Further, report of the R.I., Kuanarmunda on 30.11.2007 filed Encroachment Case No. 71 of 2007 at least revealed that the petitioner was not in possession over the portion in which Sri J. Padhi and S. Padhi were in unauthorized encroachment. Thus, the Tahasildar had rightly held that the petitioner was never in possession over the case land. Mr. Mishra further submitted that the case land comes under the approved master plan area of Kuanarmunda urban area and is reserved in category "Ga". Therefore, the opposite party No. 1 before implementation of the order dated 07.07.2012 passed by the Additional Commissioner sought for clarification from the District Office, Sundargarh vide Office Letter No. 256 dated 06.09.2012. But, no clarification having been received from the District Office, the direction given by the Additional Commissioner could not be implemented. The case land being reserved under "Ga" category of master plan of Kuanarmunda urban area, the Tahasildar had no jurisdiction to implement the order of the Additional Commissioner. Thus, Mr. Mishra, strenuously urged that there is no infirmity in the impugned order and the same needs no interference by this Court.

In reply to the submission of Mr. Mishra, Mr. Sahu drew attention of this Court to order dated 16.09.2014, wherein, this Court directed the learned Additional Standing Counsel to obtain instruction in the matter, more particularly as to whether the case land was recorded in the name of Minaketan Padhi, Haribansh Padhi and Surendra Kumar Singhdeo. He was further directed to take instruction as to whether the case land was coming under the master plan area of

Kuanarmunda. The Counter Affidavit, which was filed on 10.02.2016 reveals that said Minaketan Padhi had filed his written notes of submission to the effect that he was not in possession over Plot No. 1240 as reflected in the ROR. It further reveals from the averments of the counter affidavit that two sons of said Haribansh Padhi who claimed to have encroached a portion of the case land were evicted on 30.11.2007. However, there is no mention about said Surendra Kumar Singhdeo.

5. Having heard learned counsel for the parties and on perusal of materials on record, it appears that the case land was leased out in favour of the petitioner as he was a land oustee for establishment of Rourkela Steel Plant. Accordingly, he made an application on 04.06.1956 with required fee vide Treasury challan No. 3/12 dated 04.06.1956 to lease out a waste land in his favour for house site and cultivation in village Kuanarmunda. Accordingly, Lease case No. 71/1956-57 was initiated and the case land was settled in his favour by S.D.O., Panposh vide order dated 26.07.1961 Patta to that effect was issued on 03.08.1961. The petitioner could not participate in the Settlement proceeding for which the case land was recorded in Government Khata with note of possession of Sri Minaketan Padhi and Surendra Kumar Singhdeo. The petitioner subsequently filed Mutation Case bearing No. 493 of 1996, which was rejected due to lack of jurisdiction of the Tahasildar as the Settlement ROR had been published finally by that time. Accordingly, the petitioner filed RP Case No. 240 of 2012 under Section 15(b) of the OSS Act, which was disposed of vide order dated 07.07.2012 by the Additional Commissioner directing the Tahasildar, Kuanarmunda to record the case land in the name of the petitioner with Rayati status with usual and equitable rent after deletion of the note made in the remarks column and to give effect to the order both in map and in record. However, the Tahasildar exceeding his jurisdiction made a fresh enquiry and erroneously found that the petitioner was never in possession over the case land, which is contrary to the findings in order dated 07.07.2012 (Annexure-4). Thus, the finding of the Tahasildar to that effect is not sustainable. Further, an argument was advanced by the learned Additional Government Advocate to the effect that the case land was covered in the master plan area of Kuanarmunda under "Ga" category which cannot be recorded in the name of the petitioner. On verification of records and the averments made at paragraph-9 of the Counter Affidavit, it appears that inclusion of village Kuanarmunda to the master plan was made in the year 2005. It is also averred that the authority concerned might have included the case land in the master plan as it stood recorded in Government Khata. Be that as it may, in order dated 07.07.2012 passed in RP Case No. 240 of 2012, the Additional Commissioner has taken into consideration the contentions of the parties and on perusal of the report furnished by the Tahasildar by his letter No. 1996 dated 02.07.2012, he came to a conclusion that the petitioner is in possession over the case land. So far as inclusion of the case land in the master plan is concerned, it can be safely said that due to wrong recording of the case land in Government Khata, the case land was included in the master plan area under "Ga" category.

Accordingly, there was no difficulty on the part of opposite party No. 1 to implement the order of the Additional Commissioner, which was never challenged in any superior court of law and has reached its finality. Thus, the contentions raised by Mr. Mishra, learned Additional Government Advocate are devoid of any merit. Rule 35 of the OSS Rules provides that the Tahasildar is to carry out the order of the superior court with regard to entry in the ROR. He has no authority to sit over the order of the Additional Commissioner passed in exercise of Section 15(b) of the OSS Act. As such, the opposite party No. 1-Tahasildar, Panposh, Kuanarmunda has exceeded his jurisdiction in rejecting the application of the petitioner in Misc. Case No. 1 of 2014. In that view of the matter, the impugned order 12.03.2014 passed by the Tahasildar, Panposh district Sundargarh is quashed. The Tahasildar, Panposh is directed to carry out the direction given by the Additional Commissioner in RP Case No. 240 of 2012 forthwith by correcting the ROR in the name of the petitioner and also take appropriate steps to act in accordance with the ancillary direction given by the Additional Commissioner.

6. In the result, the writ petition is allowed.

S. Panda, J.—I agree.